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Attorneys for Defendant  
WD PARTNERS, INC.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

R&O CONSTRUCTION COMPANY, a Utah  
corporation,

Plaintiff,

vs.

ROX PRO INTERNATIONAL GROUP, LTD.,  
a Chinese company, dba ROX PRODUCTS  
INTERNATIONAL; REAL STONE SOURCE,  
LLC, a Nevada limited liability company;  
ARIZONA STONE & ARCHITECTURAL  
PRODUCTS NV, LLC; and WD PARTNERS,  
INC., an Ohio corporation,

Defendants.

CASE NO. 2:09-cv-01749-LRH-LRL

**STIPULATED APPLICATION TO  
MODIFY DISCOVERY PLAN AND  
SCHEDULING ORDER  
(THIRD REQUEST)**

Plaintiff R&O CONSTRUCTION COMPANY ("R&O" or "Plaintiff"), by and through  
its counsel of record, KENT F. LARSEN of the law firm of Smith Larsen & Wixom, and  
MICHAEL D. STANGER, of the law firm of Callister Nebeker & McCullough, and Defendants  
WD PARTNERS, INC. ("WD Partners"), by and through its attorneys KEITH C. CRAMER and  
ROBERT S. LARSEN of the law firm of Gordon & Rees, LLP, REAL STONE SOURCE, LLC  
("Real Stone"), by and through its by and through its attorneys LEONARD T. FINK and DAVID  
SCHOPICK of the law firm of Springel & Fink, LLP and ARIZONA STONE &  
ARCHITECTURAL PRODUCTS NV, LLC, by and through its attorney JASON R. WIGG of  
the law firm of Barron & Pruitt, hereby submit this Stipulated Application to Modify the

1 Discovery Plan and Scheduling Order (Third Request) ("Application") by extending the  
2 discovery deadlines for an additional two (2) months as set forth in section 2(d) below.

3 This Application complies with LR 26-4 which provides that all stipulations to extend  
4 discovery dates must be received no later than 20 days before the discovery cut-off date, which is  
5 currently set for January 10, 2010.

6 The parties submit the Application on the following grounds:

7 1. In support of this request, the parties state the following pursuant to LR 6-1:

8 a. This is the third request for an order extending discovery.

9 b. The reasons for this third request for an extension are various:

10 i. Primary experts were recently designated and the deadline for  
11 rebuttal experts has not yet passed. With the current discovery deadline, the parties will have  
12 less than 30 days in which to evaluate rebuttal expert reports and schedule depositions of both  
13 the primary and rebuttal experts.

14 ii. Despite the parties' good faith efforts, discovery remains ongoing  
15 with additional time required by both sides to respond to pending discovery, to evaluate the  
16 discovery responses of the other party, and to determine what, if any, additional discovery is  
17 necessary between the parties and/or with third parties. Remaining discovery is complicated by  
18 the physical locations of the witnesses and the availability to schedule depositions at a mutually  
19 convenient time during December..

20 iii. The discovery to date has been extensive. The parties have  
21 requested document productions, and the document volumes are becoming voluminous. WD  
22 Partners has served several subpoenas duces tecum on non-parties. Most of the non-parties have  
23 yet to respond. However, WD Partners has already supplemented numerous documents received  
24 from two non-parties. Numerous additional documents are expected to be received in response  
25 to the pending subpoenas duces tecum. It is expected that the parties will need time to review  
26 and analyze the documents to be produced.

27 iv. It is necessary that document production and review be completed  
28 before the parties can make adequate determinations regarding whether to conduct expert



1 depositions and the scope of the depositions. At this time, the parties believe that the current  
2 discovery deadlines are inadequate and additional time is needed and warranted.

3 2. In compliance with Local Rule 26-4, the parties hereby incorporate the reasons set  
4 forth at section 1(b) of this Application as their statement showing good cause for the requested  
5 extension. In further compliance with Local Rule 26(a)-(d), the parties state as follows:

6 a. Discovery completed: In addition to each parties' initial disclosures, the  
7 parties have to date completed the following discovery:

- 8 • On December 28, 2009, R&O served interrogatories, requests for admission and  
9 requests for production of documents on Real Stone and WD Partners. Real  
10 Stone served its responses on R&O on February 10, 2010. Real Stone served  
11 amended responses on March 25, 2010. WD Partners served its responses on  
12 R&O on February 22, 2010.
- 13 • R&O served interrogatories, requests for admission and requests for production of  
14 documents on Arizona Stone on March 29, 2010. On May 10, 2010, Arizona  
15 Stone served its responses to R&O's requests for production and requests for  
16 admissions. On May 20, 2010, Arizona Stone served its responses to R&O's  
17 interrogatories.
- 18 • On or about May 5, 2010, Arizona Stone served its initial disclosures. Arizona  
19 Stone filed a supplement to its initial disclosures on May 10, 2010.
- 20 • The deposition of Real Stone's FRCP 30(b)(6) witnesses, Russell Frazier and  
21 James Motarex, was held on May 13, 2010.
- 22 • Real Stone Source served a second supplement to its initial disclosures on August  
23 8, 2010.
- 24 • On August 17, 2010, Arizona Stone served interrogatories, requests for  
25 production and requests for admission on R&O. R&O served its responses on  
26 October 12, 2010.
- 27 • The deposition of WD Partners' 30(b)(6) representative was held on October 18,  
28 2010.

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- Between October 19, 2010 through October 25, 2010, WD Partners served subpoenas duces tecum on non-parties Sam's Real Estate Business Trust, Sam's West, Inc., Rainbow Arroyo Commons, LLC, and Rainbow Arroyo Commons Management, Inc. (the "Sam's entities" and the "Rainbow Arroyo" entities, respectively). The Rainbow Arroyo entities produced responsive documents on or about November 3, 2010. The Sam's entities requested two extensions and are expected to produce responsive documents on December 8, 2010.
- On November 1, 2010, the deposition of WD Partners 30(b)(6) representative was taken.
- Real Stone served a third supplement to its initial disclosures on November 9, 2010.
- On November 10, 2010, WD Partners served its first supplement to its initial disclosures which included the documents received from the subpoenas served on the Rainbow Arroyo entities.
- On November 16, 2010, WD Partners served its first set of interrogatories, requests for production and requests for admission on R&O. Responses to these discovery requests are pending.
- Between November 23, 2010 and December 7, 2010, WD Partners has sent out numerous subpoenas duces tecum to other non-parties, including the following:
  - Massengale Construction Co., Inc.
  - Buckroff Masonry
  - All About Stone, LLC
  - Carpino Stone Applications
  - HBI Construction
  - Jaynes Corporation
  - Moorefield Construction, Inc.
  - Frazier Masonry
  - Roche Constructors, Inc.
  - Rafael Constructions, Inc.
  - The Masonry Group
  - Chad Hirschi (former president of The Masonry Group)
  - CCB Enterprises, Inc. dba Crisci Builders
  - Central States Construction



1 Keystone Construction Co.  
2 Clark County Development Services  
3 Sport Chalet, Inc.  
4 Paddock Pools of Nevada, Inc.  
5 David's Bridal, Inc.  
6 Walmart, Inc.

- 7 • None of the subpoenaed listed above have responded to the subpoenas. Several  
8 have contacted WD Partners and stated that documents will be produced. WD  
9 Partners expects that it will receive responsive documents from those entities  
10 within the next ten days. Clark County Development Services has allowed WD  
11 Partners to review documents to help narrow the scope of production. The review  
12 is presently underway.
- 13 • WD Partners served its second set of requests for production on R&O on  
14 December 3, 2010. R&O's response is pending.

15 b. Specific description of the discovery that remains to be completed: The  
16 discovery that remains to be completed includes, but is not limited to, the following: (i)  
17 responses to pending discovery requests; (ii) additional written discovery requests (i.e., WD  
18 Partners intends to serve written discovery requests on Real Stone and Arizona Stone); (iii) Fed.  
19 R. Civ. Pro. 30(b)(6) depositions of Arizona Stone and R&O; (iv) depositions of percipient  
20 witnesses, including potential non-party witnesses; (v) depositions of primary experts of R&O (2  
21 designated experts) and Real Stone (1 designated experts); and (vi) rebuttal expert designations  
22 and depositions, if any.

23 At this time, no discovery motions are contemplated by the parties.

24 c. Reasons why discovery remaining will not be completed within the time  
25 limits set by the discovery plan: The discovery remaining will not be completed within the  
26 current time limits for the reasons stated above, including particularly the extensiveness of the  
27 discovery requested by the parties amongst themselves already, the time required to respond to  
28 that discovery, difficulty in coordinating deposition schedules for primary experts and rebuttal  
experts over the holiday period. All of the experts designated so far are located outside of the  
state of Nevada.

- d. Proposed schedule for completing all remaining discovery:
- i. Last date to complete discovery: March 10, 2011 (two additional months from current deadline of January 10, 2011);
  - ii. Rebuttal expert witness disclosures and reports: January 10, 2011;
  - iii. Last date to file dispositive motions: April 8, 2011;
  - vii. Last date to file joint pretrial order May 12, 2011 or within 30 days of the date the Court enters a ruling on dispositive motions.

3. No trial date has been set at this time.

DATED this \_\_\_\_ day of December, 2010.

**SMITH LARSEN & WIXOM**

By: /s/ Kent F. Larsen  
 KENT F. LARSEN  
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DATED this 10<sup>th</sup> day of December, 2010.

**CALLISTER NEBEKER & MCCULLOUGH**

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DATED this 10<sup>th</sup> day of December, 2010.

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DATED this \_\_\_\_ day of December, 2010.

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- d. Proposed schedule for completing all remaining discovery:
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DATED this \_\_\_\_ day of December, 2010.

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By: \_\_\_\_\_

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DATED this \_\_\_\_ day of December, 2010.

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DATED this \_\_\_\_ day of December, 2010.

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DATED this 9 day of December, 2010.

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DATED this 10<sup>th</sup> day of December, 2010.

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*Attorneys for Arizona Stone &  
Architectural Products NV, LLC*

**ORDER**

IT IS SO ORDERED.



UNITED STATES MAGISTRATE JUDGE

Dated: 12-16-10

Respectfully Submitted by:

**GORDON & REES LLP**

By: /s/ Robert S. Larsen

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